

10/009,306BB46457USAREMARKS

Claims 58-75 are currently pending in the subject application and are presently under consideration. Claims 58, 72, and 73 have been amended herein to more clearly set forth aspects previously presented in the claims and supported by the specification, such that no new matter has been introduced into the claims. Specifically, the claims have been amended to more clearly emphasize that the container closure contacts the container only at exterior surfaces, without requiring additional material to contact an inner surface of the container in order to sufficiently seal the container. Accordingly, no further search by the Examiner is believed to be necessary, and entry of the subject amendments is respectfully requested. A marked-up version of all pending claims is found at pages 2-6 of this Reply.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

**I. Rejection of Claims 58-60, 63-68, 70-75 Under 35 U.S.C. §102(b)**

Claims 58-60, 63-68, and 70-75 stand rejected unpatentable over Ohmi *et al.* (U.S. 5,762,217). It is respectfully requested that this rejection be withdrawn for at least the following reasons. Ohmi *et al.* does not teach or suggest every element of the subject claims.

To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) *must teach or suggest all the claim limitations*. See MPEP §706.02(j). The *teaching or suggestion to make the claimed combination* and the reasonable expectation of success *must both be found in the prior art and not based on applicant's disclosure*. See *In re Vaack*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991) (emphasis added).

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The present invention relates generally to container closures, and in particular to container closures for pressurized products, such as pressurized beverages. Independent claim 58 has been amended to recite "A container closure assembly, comprising a container mouth and a closure therefor, the closure has a top portion with a plurality of segmented lugs depending there from, each of which has a plurality of vertical ridges, the closure comprising an engagement device configured for interlocking with a formation around the mouth to retain the closure on the mouth...the closure assembly physically interfaces only with a top surface and exterior surfaces of the container mouth"

Independent claims 72 and 73 have been amended to recite similar aspects. Such aspects of independent claims 58, 72, and 73 are supported by the specification at, for example, Figures 1-7 and related text. As illustrated in Figures 1-7, the closure comprises a top portion having lug segments that depend there from, such that the closure is securely fitted over a rim of a container *without physically contacting an interior surface of the container*. Such aspects of the claimed invention facilitate decreasing production costs and device complexity by mitigating a need for a superfluous interface with an interior surface of a container rim. Ohmi *et al.* does not describe such aspects of the applicant's invention.

With regard to independent 58, 72, and 73, it is noted that the subject reference has been combined with statements of "official notice" to claim obviousness of the features of the present invention. It is respectfully submitted that the Examiner has not met his burden of establishing a *prima facie* case of obviousness. Furthermore, the Examiner appears to be taking Official Notice of facts not specifically supported by the cited reference and apparently considers such as "well known" or common within the art. Applicant's representative traverses the Official Notice and respectfully requests showing of reference(s) under M.P.E.P. § 2144.03 to support the Examiner's assertion, or in the alternative, withdrawal of this assertion from the rejection.

As stated by the Examiner, Ohmi *et al.* does not teach a plurality of ridges on the surface of the closure facing the band. The Examiner takes Official Notice that it is well known to vary the number of frangible webs between two elements for any desired purpose. However, "allegations concerning specific knowledge of the prior art, which might be peculiar to a particular art should be supported." Moreover, facts so noticed serve to fill the gaps which might exist in the evidentiary showing and should not

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comprise the principle evidence upon which a rejection is based. *See In re Ahlert*, 424 F.2d 1088, 1091, 165 USPQ 418, 420-421. Still furthermore, "the facts constituting the state of the art are normally subject to the possibility of rational disagreement among reasonable men and are not amenable to the taking of notice." *In re Eynde*, 480 F.2d 1364, 1370, 178 USPQ 470, 474.

Moreover, absent some teaching or suggestion in the prior art to combine the elements, it is insufficient to establish obviousness by claiming that the separate elements of the invention existed in the prior art. *Arkie Lures Inc. v. Gene Larew Tackle Inc.*, 43 USPQ2d 1294, 1297 (Fed. Cir. 1997). Thus, a *prima facie* case of obviousness has not been established against the applicants' claimed invention. Further, the subject invention would not have been obvious to one ordinarily skilled in the art sufficient to impel him/her to do what the applicant has suggested, other than *via* employment of applicant's specification as a 20/20 hindsight-based road map to achieve the purported invention.

In view of the foregoing, it is respectfully submitted that *Ohmi et al.* does not anticipate or make obvious the present invention as set forth in independent claims 58, 72, and 73 (and claims 59-60, 63-68, 70, 71, 74, and 75, which depend respectively there from). Accordingly, withdrawal of this rejection is respectfully requested.

## **II. Rejection of Claim 62 Under 35 U.S.C. § 103(a)**

Claim 62 stands rejected under 35 U.S.C. §103(a) as being unpatentable over *Ohmi et al.* (U.S. Patent 5,762,217). It is respectfully requested that this rejection be withdrawn for at least the following reasons. *Ohmi et al.* does not teach or suggest every element of the subject claims.

As discussed *supra* with respect to Section I, *Ohmi et al.* does not make obvious the claimed aspects of a plurality of lug segments, each of which has a plurality of vertical ridges positioned thereon, as set forth in independent claim 58 let alone the aspect of a closure that interfaces only an exterior surface of a container without contacting an interior surface of an aperture thereof. In view of such, *Ohmi et al.* does not make obvious claim 62, which depends from claim 58. Therefore, withdrawal of this rejection is respectfully requested.

10/009.306BB46457USA**III. Rejection of Claim 69 Under 35 U.S.C. § 103(a)**

Claim 69 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Ohmi *et al.* (U.S. Patent 5,762,217) in view of Bean (U.S. Patent 4,216,872). It is respectfully requested that this rejection be withdrawn for at least the following reasons. Neither Ohmi *et al.* nor Bean, alone or in combination, teach or suggest every aspect of applicant's invention as set forth in the subject claims.

As stated *supra* in Section I, Ohmi *et al.* does not teach or suggest a plurality of lug segments, each of which comprises a plurality of vertical ridges, let alone a closure that interfaces only with an outer surface of a container, as set forth in independent claim 58, from which claim 68 depends. Bean fails to overcome the deficiencies of Ohmi *et al.* with respect to independent claim 58. Specifically, Bean does not teach or suggest a plurality of ridges on each of a plurality of wall segments or a closure that physically interfaces with only an exterior surface of a container.

In view of at least the foregoing, neither Ohmi *et al.* nor Bean, alone or in combination, teach or suggest every aspect of applicant's invention as set forth in the subject claim. This rejection should be withdrawn.

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The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063.

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicant's undersigned representative at the telephone number listed below.

Respectfully submitted,

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